SINGAPORE REPORTS

RICHARD CHARLES TARLING v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Sinnathuray & Chua JJ.) January 6, 1981]

[Singapore — Criminal Appeal No. 17 of 1979]

Criminal Law and Procedure — Charge of wilfully failing to comply with provisions of Companies Act — Report of Directors — Profit and Loss Account — Failure to disclose — Error in charges — No failure of justice — Companies Act (Cap. 185), ss. 169 & 171 — Criminal Procedure Code (Cap. 113), ss. 161 & 395.

Company Law — Charge of wilfully failing to comply with provisions of Companies Act — Report of Directors — Profit and Loss Account — Failure to disclose — Statutory information — Companies Act (Cap. 185), ss. 169 & 171.

The appellant, who was the Chairman of Haw Par Brothers International Ltd., appealed against his conviction of offences of wilfully failing to comply with various provisions of the Companies Act. As a result of dealing in shares the company had accumulated substantial profits and in order to avoid disclosing the profits, a scheme was devised to set up a unit trust. The effect of the transactions entered into was to set up a company renamed the Grey Securities Ltd. and a unit trust the Melbourne Unit Trust. The trustee of the Melbourne Unit Trust was Legis Ltd. a trustee company to whom Grey Securities Ltd. was sold. The profits in the form of shares were in effect transferred to Grey Securities Ltd. which carried on its activities "below the trust". The profits earned were paid to the Melbourne Unit Trust, who in turn would declare them as dividends from time to time to subsidiaries of Haw Par Brothers International Ltd.

The accounts of Haw Par Brothers International Ltd. and the consolidated accounts of the company and its subsidiaries were laid before the company at its general meeting held on 18th May 1973. Annexed to these accounts were the Chairman's report signed by the appellant, the Statutory Directors' Report and the Statutory Statement of the Directors both of which were signed by two directors on behalf of the Directors.

The evidence showed that in those accounts and the Notes attached to them there was no disclosure of the sale of Grey Securities Ltd. to Legis Ltd. the trustee of Melbourne Unit Trusts which resulted in Grey Securities Ltd. going under the trust. There was also no disclosure of the phenomenal realised profits made by Grey Securities Ltd. In the Directors' Report there was also no mention of the facts and of the formation of the Melbourne Unit Trust or any particulars about it.

Held: (1) the non-disclosure in the Directors' Report of the sale of Grey Securities Ltd. which resulted in its "going under the trust", the non-disclosure of the creation of Melbourne Unit Trust and the non-disclosure of the profit of Grey Securities Ltd. rendered the amount of profits stated in the consolidated accounts misleading;

(2) the sale of Grey Securities Ltd. at a cash valuation to Melbourne Unit Trust was a transaction of a material and unusual nature which substantially affected the results of the group's operations during the financial year 1972 and particulars of which and the effect thereof should have been disclosed in the Directors' Reports;

(3) the profit and loss account of the group for the financial year 1972 failed to give a true and fair view of the profit of the group as shown in the accounting and other records of the group because of the non-disclosure in the profit and loss account of the realised profits made by Grey Securities Ltd. prior to its sale to Legis Ltd., the trustee of Melbourne Unit Trust and of particulars of that sale;

(4) there was an error in the charges in this case as reference was made only to the profit and loss account of the company, although the particulars stated in the charges and evidence showed that the charges referred to the consolidated profit and loss account of the company and its subsidiaries. The appellant was however not misled, prejudiced or embarrassed by the error in the charges and the error did not occasion a failure of justice;

(5) section 169(5) of the Companies Act in its original form did not require the directors of a holding company to report to its shareholders on the profit or loss of the holding company and all its subsidiaries. However the Director's Reports in this case did report on the accounts of the company and its subsidiaries and the directors were obliged to comply with the provisions of paragraphs (o) and (p) of section 169(6) of the Act;

(6) having regard to the provisions of the whole of section 169, directors of any company, including a holding company are under a statutory duty to draw the attention of the shareholders, in relation to all accounts laid before the shareholders at an annual general meeting, to any circumstances not disclosed in the report or in the accounts which would render any amount stated in the accounts misleading and to draw the attention of its shareholders to any item, transaction or event of a material and unusual nature which substantially affected the results of the company's operation during the financial year;

(7) on the evidence and on the findings of fact by the trial judge the non-disclosures by the appellant were intentional and deliberate;

(8) on the facts the appellant could not say that he had reasonable grounds to believe that the consolidated profit and loss account prepared by the accountants gave a true and fair view of the profit of the group and that in this respect he had taken all reasonable steps to secure compliance with the requirements of section 169(14) of the Act;

(9) on all the facts and circumstances and having regard to section 171 of the Act, it could not be said that the sentences imposed by the trial judge were manifestly excessive.

COURT OF CRIMINAL APPEAL.

H.E. Cashin (*Dr. Myint Soe* with him) for the appellant.

Tan Teow Yeow (Deputy Public Prosecutor) (*Fong Kwok Jan,* Deputy Public Prosecutor with him) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the Court): The appellant, Richard Charles Tarling, was convicted by the High Court on the following five charges:—

"*1st Charge:*

That you, Richard Charles Tarling, together with Donald Edgar Ogilvy Watson and Ian Keith Tamblyn, on or about the 19th April 1973, being directors of Haw Par Brothers International Ltd., wilfully failed to comply with the provisions of section 169(6)(o) of the Companies Act, Cap. 185, in that in the report by the directors of the said company with respect to the profit of the said company for the financial year ended 31st December 1972 and the state of the company's affairs as at the end of the said year you failed to state with appropriate details that you were aware of circumstances not otherwise dealt with in the said report or the accounts which rendered the amount of profit stated in the accounts misleading and failed to give particulars of the sale of Grey Securities Ltd., a wholly owned subsidiary of the said company, on the 28th June 1972 to Legis Ltd., the trustee of the Melbourne Unit Trust, and of the creation of the said Trust and the profits of Grey Securities Ltd., and of Cobra Investments Ltd., which were not reflected in the said accounts which were circumstances rendering the amount stated as aforesaid misleading and that you have thereby committed an offence punishable under section 171(1) and (4) of the said Act;

2nd Charge:

That you, Richard Charles Tarling, together with Donald Edgar Ogilvy Watson and Ian Keith Tamblyn, on or about the 19th April 1973, being directors of Haw Par Brothers International Ltd., wilfully failed to comply with the provisions of section 169(6)(p) of the Companies Act, Cap. 185, in that in the report by the directors of the said company with respect to the profit of the said company for the finan-

cial year ended 31st December 1972 and the state of the company's affairs as to the end of the said year you wilfully failed to state with appropriate details that the results of the said company's operations during the financial year were, in the opinion of the directors, substantially affected by a transaction of a material and unusual nature, namely, the sale at a cost valuation of Grey Securities Ltd., a wholly owned subsidiary of the said company, on the 28th June 1972 to Legis Ltd., the trustee of the Melbourne Unit Trust, with very substantial profits realised by the said subsidiary prior to the said sale, and failed to give particulars of the said sale and the effect thereof, which were known or reasonably ascertainable, and you have thereby committed an offence punishable under section 171(1) and (4) of the said Act;

3rd Charge:

That you, Richard Charles Tarling, together with Donald Edgar Ogilvy Watson and Ian Keith Tamblyn, on or about the month of April 1973, being directors of Haw Par Brothers International Ltd., wilfully failed to take all reasonable steps to secure compliance with section 169(14) of the Companies Act, Cap. 185, in that the profit and loss account for the company aforesaid for the financial year ended the 31st December 1972 laid before the said company at its annual general meeting failed to give a true and fair view of the profit of the said company for the said financial year as shown in the accounting and other records of the said company by wilfully failing to secure that the said account disclosed the full extent of the profits made by Grey Securities Ltd., a wholly owned subsidiary of the said company until the 28th June 1972, and full particulars of the sale of the said subsidiary to Legis Ltd., the trustee of the Melbourne Unit Trust, and the effect thereof and you have thereby committed an offence punishable under section 171(1) and (4) of the said Act;

4th Charge:

That you, Richard Charles Tarling, together with Donald Edgar Ogilvy Watson and Ian Keith Tamblyn, on or about the 8th May 1974, being directors of Haw Par Brothers International Ltd., wilfully failed to comply with the provisions of section 169(6)(o) of the Companies Act, Cap. 185, in that in the report by the directors of the said company with respect to the profit of the said company for the financial year ended the 31st December 1973 and the state of the company's affairs at the end of the said financial year you failed to state with appropriate details that you were aware of circumstances not otherwise dealt with in the said report or the accounts which rendered the amount of profit stated in the accounts misleading and failed to give particulars of the Melbourne Unit Trust and of the fact that a part of the profits of the Haw Par Brothers International Ltd., in the said financial year arose from profits which have been made by Grey Securities Ltd., and Cobra Investments Ltd., prior to the said financial year, which were circumstances rendering the said amount of profit stated in the accounts misleading and you have thereby committed an offence punishable under section 171(1) and (4) of the said Act;

5th Charge:

That you, Richard Charles Tarling, together with Donald Edgar Ogilvy Watson and Ian Keith Tamblyn, on or about the month of May 1974, being directors of Haw Par Brothers International Ltd., wilfully failed to take all reasonable steps to secure compliance with section 169(4) of the Companies Act, Cap. 185, in that the profit and loss account for the company aforesaid for the financial year ended the 31st December 1973 laid before the said company at its annual general meeting failed to give a true and fair view of the profit of the said company for the said financial year as shown in the accounting and other records of the said company by wilfully failing to secure that the said account disclosed the existence and structure of the Melbourne Unit Trust and the extent to which the said profit arose from profits made by Grey Securities Ltd., and Cobra Investments Ltd., prior to the said financial year and you have thereby committed an offence punishable under section 171(1) and (4) of the said Act."

He was sentenced to six months' imprisonment on each of the first three charges and to one day's imprisonment on each of the other two charges, the sentences to run concurrently. He now appeals against the convictions and sentences.

The undisputed prosecution evidence can be briefly summarised. In June 1971, Slater Walker Securities Ltd. of the United Kingdom, a big financial conglomerate with a large number of subsidiaries and engaged in a variety of businesses like banking, property and insurance extended their sphere of activities to Singapore and the Far East by acquiring a near fifty percent interest in Haw Par Brothers International Ltd. (HPBIL), a Singapore company. In Hong Kong HPBIL had a wholly owned subsidiary called Haw Par Brothers Hong Kong Ltd. (HPBHK). On this acquisition the appellant who was a director of Slater Walker Securities Ltd. along with four other Slater Walker executives were appointed to the Board of HPBIL. Watson, whose name appears in all the five charges was one of the Slater Walker executives so appointed. Executives of Slater Walker Securities Ltd. were also appointed to the Board of HPBHK. Those executives were paid by Slater Walker Singapore Ltd. (SWS), a wholly owned subsidiary of Slater Walker Securities Ltd. SWS charged a management fee for their services. Thus SWS and Slater Walker Securities Ltd. had a de facto influence in and control of the day to day administration of HPBIL and HPBHK.

On February 29, 1972, HPBIL acquired seven million shares representing seventy per cent of the issued share capital of HK$1 each in a Hong Kong company called Kwan Loong & Co. (Hong Kong) Ltd. (KL), a public company quoted on the Far East Stock Exchange of Hong Kong. The purchase price was HK$1.20 per share. The total cost was met by the allocation to the vendors of 1,066,330 shares in HPBIL which were issued for the purpose of this transaction. Those seven million KL shares were transferred by HPBIL to its Hong Kong subsidiary HPBHK, a dealing company for HK$27,929,226 as evidenced by a debit entry in the books of HPBHK. In September 1971, before this transaction, the appellant, on the death of Mr. Aw, the then Chairman of HPBIL, was appointed Chairman and in December 1971 Watson was appointed managing director of HPBIL.

On March 8, 1972, HPBHK bought 6,663,000 shares in another Hong Kong public company quoted on the Far East Stock Exchange of Hong Kong called Kung Fung Development Ltd. (KF) for HK$2.85 per share. The total price of HK$18,989,550 was paid in cash.

At the time the KL and KF shares were acquired the share markets in Singapore and Hong Kong were experiencing boom conditions and prices of most stocks and shares were continually rising. Soon after their acquisition the prices of KL and KF shares started to move up rapidly. At the end of March 1972 KL shares were quoted at HK$6.50 and KF shares at HK$4.80. By the end of April 1972 their prices had risen to HK$7.40 and HK$6.40 respectively and by the end of May 1972 their prices had soared even higher to HK$16.00 and HK$7.80 respectively. From March 17, 1972 HPBHK started selling its holding of KF shares in small lots and began making large profits and by the end of May 1972 when it had sold all its KF shares the total profits amounted to HK$24.8 million. After March 1972 HPBHK also started selling its KL shares in small lots and by June 28, 1972 had sold a significant portion of its seven million KL shares

with total profits amounting to HK$17.6 million. As a result of these sales the profit and loss account of HPBHK for the period January 1, 1972 to June 28, 1972 showed it had made HK$35.4 million as realised pre-tax profits. Out of these realised profits an interim dividend of HK$7 million due to HPBIL was paid on June 28, 1972 by HPBHK which had on June 16, 1972 been re-named Grey Securities Ltd. (Grey). As at June 28, 1972 HPBHK (now Grey) had unrealised profits amounting to HK$24 million.

Sometime in April 1972 there was a discussion in Hong Kong between Watson, Johnson-Hill, another SWS executive and Moore, a Hong Kong solicitor on how to avoid having to disclose the huge profits for 1972 for HPBIL arising from the purchase and subsequent dealings in the KL and KF shares by its wholly owned subsidiary HPBHK. It was apparently suggested by Moore that this could be achieved by the creation and use of a unit trust in that whereas profits made by HPBHK would require to be disclosed in the consolidated profit and loss account of HPBIL, the profits of a unit trust would not.

In May 1972 Watson discussed this suggestion with Scothorne, a chartered accountant who had joined HPBIL in January 1972 and became its financial controller but was paid by SWS. According to Scothorne, whose evidence was accepted by the trial judge, Watson was the most senior Slater Walker Securities Ltd. executive. Although Watson was the executive head of HPBIL he would consult the appellant, who was based in London, on all important matters and there were frequent telex communications between them and before any major decision was taken Watson would always speak to the appellant over the telephone, such telephone conversations taking place about once every fortnight in 1972 and 1973.

The telex messages produced at the trial showed, as found by the trial judge, that although the appellant was only very infrequently in Singapore during the relevant years, he kept in close touch with the activities of HPBIL and directed all major moves and no important step was taken without his prior approval. The trial judge also found that the appellant knew and approved of the purchase of the KL and KF shares, was well aware of the large profits that HPBHK was making from the sales of KF shares in April and May 1972 and was just as keen as Watson was to see that these profits were not disclosed in HPBIL's mid-year and end year consolidated accounts. The trial judge also found that the appellant was fully aware of the proposal to set up a unit trust to circumvent disclosure of these profits in HPBIL consolidated accounts and actively supported and approved of the setting up of the unit trust called Melbourne Unit Trust (MUT). We accept these findings.

It is convenient at this stage to relate the moves involved in the formation of MUT. Once the idea of setting up a unit trust to avoid consolidating HPBHK accounts with that of HPBIL was accepted towards the end of May 1972, the mechanics of getting the scheme working had to be completed before June 20, 1972. This was to avoid the huge realised profits from HPBHK's dealings in the KL and KF shares having to be disclosed in the mid-year consolidated accounts of HPBIL. In this way the management of HPBIL had these profits in reserve which could be brought in as profits, as and when necessary, of the group to show a pattern of steady growth over the years.

The appellant, in his Chairman's speech attached to the Annual Report for the year 1971, when commenting on the results of the group for that year, had claimed that in the second half of the year under the new management (i.e. the SWS executives) the group profits showed a 190 per cent improvement over the first half of the year. With the huge profits from the KL and KF transactions undisclosed as profits and kept in reserve, the SWS executives could, whenever it was necessary to do so, avail themselves of these reserves in future years to show a continuing steady growth of profits of the group under their stewardship. Thus their reputation for management expertise would be enhanced which would not otherwise be if all these profits were disclosed in the 1972 consolidated accounts of the group.

Accordingly, on June 2, 1972, two wholly owned subsidiaries of HPBIL were incorporated in Hong Kong called Adder Investments Ltd. (Adder) and Haw Par High Income Ltd. (HPHI). Then on June 16, 1972 Adder changed its name to Haw Par Hongkong Ltd. (HPHK) and HPBHK changed its name to Grey Securities Ltd. (Grey). On June 27, 1972 a trust deed was executed whereby a unit trust called Melbourne Unit Trust (MUT) was formed. Under the trust deed the trustee of MUT was a trustee company called Legis Ltd. which was wholly owned by a Hong Kong solicitors firm Deacons and the managers of the trust were Melbourne Investment Management Ltd. (MIM), a wholly owned subsidiary of Slater Walker Hongkong Ltd. [SW (HK)].

On June 28, 1972, HPHK and HPHI (the two new wholly owned subsidiaries of HPBIL which were incorporated on June 2, 1972) each subscribed HK$5.999 million in cash and were each issued 5,999 units in MUT, each unit costing HK$1,000. SW (HK) and another company called Ida Enterprise Ltd. each subscribed for and were each issued one unit in MUT. In the result HPBIL were the beneficiaries of any profits made by MUT.

To complete the implementation of the scheme the following steps were then taken:—

(i) Grey (formerly HPBHK) which owed HPBIL HK$27,929,228 for its purchase of the KL shares, repaid this inter-company debt by paying HK$13,919,228 to HPHK and HK$14,010,000 to HPHI and also paid to HPHK the interim dividend of HK$7 million due to HPBIL.

(ii) Grey sold 3 million KL shares to HPHI at the base rate of HK$1.20 per share.

(iii) HPBIL sold Grey to HPHK at Grey's book value of HK$10.8 million.

(iv) HPHK then sold Grey to Legis for HK$10.8 million.

The effect of these transatcions was to capitalise the exceptionally high and, in a financial sense, adventitious short-term profits of HPBHK (now Grey) by transferring them to the two wholly owned sub-

sidiaries of HPBIL, i.e. HPHK and HPHI, and paying as dividend HK$7 million which had accrued prior to June 30, 1972. Thereafter the activities of Grey (formerly HPBHK), which had enormous realised and unrealised profits, were carried on "below the trust" and thus would not appear in the consolidated accounts of HPBIL. The profits earned, however, would be paid to MUT, who in turn could declare them as dividends in such measures as was considered appropriate or expedient to HPHK and HPHI and thus ultimately to HPBIL.

As shown earlier, Grey before it went "below the trust" on June 29, 1972 had retained realised profits of approximately HK$29 million as well as another HK$24 million as unrealised profits. By December 31, 1972 the profit and loss account of Grey as a result of its dealing activities, showed that it had for the year ended December 31, 1972 made realised pre-tax profits of HK$42.2 million and undistributed profits after tax of HK$27.25 million.

The accounts of HPBIL and the consolidated accounts of HPBIL and its subsidiaries for the year ended December 31, 1972 were laid before the company at its annual general meeting held on May 18, 1973. Annexed to those accounts were the Chairman's Statement signed by the appellant, the statutory Directors' Report and the statutory Statement of the Directors both of which were signed by Watson and Tamblyn on behalf of the directors.

The undisputed evidence was that in those accounts (or in the Notes to those accounts which Notes are an integral part of the accounts) there was no disclosure of the sale of Grey to Legis the trustee of MUT which resulted in Grey going under the trust. There was also no disclosure of the phenomenal realised profits made by Grey. In the Directors' Report there was also no mention of these facts and of the formation of MUT or any particulars of MUT.

The Chairman's Statement referred to the consolidated pre-tax profits and the consolidated balance sheet assets as compared with the pre-tax profits and assets for the previous year. The Directors' Report referred to the "Results for the Financial Year" of "The Group" and "The Company". In their Report under the heading "Other Statutory Information" the directors stated:—

"At the date of this Report:—

(5) The Directors are not aware of any circumstances not otherwise dealt with in the report or accounts which would render any amount stated in the accounts misleading."

In our judgment, from all the facts that we have briefly outlined the conclusion is inescapable that the non-disclosure in the Directors' Report of the sale of Grey which resulted in its "going under the trust", the non-disclosure of the creation of MUT and the non-disclosure of the profits of Grey rendered the amount of profits stated in the consolidated accounts misleading.

Also, in our judgment, the sale of Grey at a cost valuation to MUT was a transaction of a material and unusual nature which substantially affected the results of the group's operations during the financial year 1972 and particulars of which and the effect thereof should have been disclosed in the Directors' Report.

Furthermore, in our judgment, the profit and loss account of the group for the financial year 1972 failed to give a true and fair view of the profit of the group as shown in the accounting and other records of the group because of the non-disclosure in the profit and loss account of the realised profits made by Grey prior to its sale to Legis, the trustee of MUT and of particulars of that sale.

We deal now with the appellant's submission on the charges. The first submission is based on the words of the charges which stated the offences with which the appellant was charged and stated the particulars of the manner in which the alleged offences were committed. It is pointed out that in all the five charges the appellant in his capacity as a director of Haw Par Brothers International Ltd. (HPBIL) was alleged to have wilfully failed to comply with the provisions of section 169 of the Companies Act, Cap. 185 in relation to the profit and loss accounts or the balance sheets of HPBIL for the financial years 1972 and 1973. The submission is that since all the prosecution evidence at the trial was directed to prove that the appellant had wilfully failed to comply with the provisions of section 169 in relation to the profit and loss accounts or the balance sheets of HPBIL and its subsidiaries (i.e. of the consolidated accounts of the group) for the financial years 1972 and 1973 and since there was no evidence in relation to the accounts of HPBIL, the holding company, the convictions were wrong in law.

It is plain that there was an error in each of the five charges. The trial judge dealt with the error at page 39 of his judgment as follows:—

"Though the charges refer to the profit and loss account of the Company (HPBIL) nevertheless from the particulars stated in the charges it is beyond doubt that all these charges referred to the consolidated profit and loss account of the Company and its subsidiaries. The first, second and fourth charges concerned non-disclosures in the directors' report on the consolidated profit and loss account, while the third and fifth charges complain that the consolidated profit and loss account failed to give a true and fair view of the profits of the Company and its subsidiaries by not disclosing the full extent of the profits made by Grey and the particulars of the sale of Grey to MUT".

Section 161 of the Criminal Procedure Code provides as follows:—

"161. No error in stating either the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material unless the accused was in fact misled by that error or omission.

Illustrations

(d) *A* is charged with the murder of John Smith on June 6, 1891. In fact the murdered person's name was James Smith and the date of the murder was June 5, 1891. *A* was never charged with any murder but one and had heard the inquiry before the Magistrate which referred exclusively to the case of James Smith. The court may infer from these facts that *A* was not misled and that the error in the charge was immaterial."

Throughout the very lengthy trial all the evidence and cross-examination of the witnesses called on behalf of the prosecution and of the defence were directed to the consolidated accounts of the group, to the state of affairs of the group and to the manner in which the profits of a Hongkong subsidiary HPBHK were manipulated.

In our judgment section 395 of the Criminal Procedure Code applies. It reads:—

"395. Subject to the provisions hereinbefore contained no finding, sentence or order passed or made by a court of competent jurisdiction shall be reversed or altered on account of —

(a) any error, omission or irregularity in the complaint, summons, warrant, charge, judgment or other proceedings before or during trial or in any inquiry or other proceeding under this Code;

unless such error, omission, improper admission or rejection of evidence, irregularity or want has occasioned a failure of justice."

It has never been submitted on behalf of the appellant that he has been misled, prejudiced or embarrassed by the error in the charges and in our judgment it is plain beyond doubt that the error relied on by the appellant has not occasioned a failure of justice.

The next submission relates to the allegations in the 1st, 2nd and 4th charges of non-disclosures in the Directors' reports in respect of the profits of HPBIL and all its subsidiaries for the financial years ended December 31, 1972 and December 31, 1973. The submission is that the obligation imposed on the directors of a holding company by section 169(5) to make a report to its share-holders is limited to reporting on the state of affairs of the group and no obligation is imposed on the directors to report on the profit or loss or the results of the group's operations.

Section 169(5) as first enacted reads as follows:—

"169. — (5) The directors of a company shall cause to be attached to every balance-sheet made out pursuant to this section a report signed by or on behalf of the directors with respect to the state of the company's affairs and if the company is a holding company, also a report with respect to the state of affairs of the holding company and all its subsidiaries."

It was amended with effect from October 1, 1971 to read:—

"169. — (5) The directors of a company shall cause to be attached to every balance-sheet made out under sub-section (3) of this section a report made in accordance with a resolution of the directors and signed by not less than two of the directors with respect to the profit or loss of the company for the financial year and the state of the company's affairs as at the end of the financial year."

It was re-amended with effect from October 5, 1973 to read:—

"169. — (5) The directors of a company shall cause to be attached to every balance-sheet made out under sub-section (3) of this section a report made in accordance with a resolution of the directors and signed by not less than two of the directors with respect to the profit or loss of the company for the financial year and the state of the company's affairs as at the end of the financial year and if the company is a holding company also a report with respect to the state of affairs of the holding company and all its subsidiaries."

We accept the correctness of the submission. Simply as a matter of construction, section 169(5) in its original, amended or re-amended form, does not require the directors of a holding company to report to its share-holders on the profit or loss of the holding company and all its subsidiaries. However, it is pointed out on behalf of the Public Prosecutor that the Directors' reports for the financial years ended December 31, 1972 and December 31, 1973 did in fact report not only on the accounts of HPBIL as laid before the share-holders at the annual general meeting but also on the consolidated accounts (the consolidated profit and loss account and the consolidated balance sheet) of HPBIL and all its subsidiaries. Accordingly, it is contended that the directors were obliged to comply with the provisions of section 169(6)(o) and (p) in their reports for the years 1972 and 1973.

We agree with this contention. Although section 169(5) does not impose an obligation on the directors of a holding company to report on the profit or loss of the holding company and all its subsidiaries, the provisions of paragraphs (o) and (p) of section 169(6) must be complied with if the directors, pursuant to section 169(5), attach to the balance sheet a report with respect to the profit or loss of the holding company and all its subsidiaries.

In our opinion, having regard to the provisions of the whole of section 169, directors of any company, including a holding company, are under a statutory duty to draw the attention of the share-holders, in relation to all accounts laid before its share-holders at an annual general meeting, any circumstance not disclosed in the report or the accounts which would render any amount stated in the accounts misleading and to draw the attention of its share-holders to any item, transaction or event of a material and unusual nature which substantially affected the results of the company's operations during the financial year.

Another submission in respect of the 1st, 2nd and 4th charges is that the trial judge was wrong in finding that the appellant's failure to comply with the provisions of section 169(6)(o) and (p) was wilful. It is pointed out that the appellant was not present at the meetings of the board of directors which approved the reports for the years ended December 31, 1972 and December 31, 1973. The trial judge's finding was that even though he was not present it was incumbent upon him to see that the directors' report contained the necessary disclosures as required by the Act as he "had taken steps to set in train the MUT scheme which would ensure that the profits made by Grey in 1972 was not disclosed in the consolidated profit and loss account". We accept this finding as there was ample evidence before the trial judge to support it. It is also urged on the appellant's behalf that as he relied on a professional accountant Arthur Young who prepared the directors' report, the appellant's failure to comply could not be wilful. We disagree. On the evidence and on the findings of fact by the trial judge the non-disclosures were not only not unintentional, but in our judgment, were deliberate.

In respect of the 3rd and 5th charges which allege wilful failure to take all reasonable steps to secure compliance with section 169(14) of the Act the submission is that as consolidated accounts were prepared by accountants the appellant had reasonable grounds to believe that the consolidated profit and loss account so prepared would in fact give a true and fair view of the profit of the group and in these circumstances he had taken all reasonable steps to secure compliance with the requirements of the Act. The trial judge rejected this submission and so do we having regard to all the facts as found by the trial judge.

Lastly, it is submitted that the sentences were manifestly excessive. It is common ground that these

offences caused no loss to the share-holders of HPBIL and that the appellant derived no personal gain or benefit from his acts or omissions in relation to these offences. Nevertheless, in respect of all the five charges, the finding of the trial judge, with which we agree, was that all the offences were committed wilfully. In our judgment, on all the facts and circumstances and having regard to section 171 of the Act, it cannot be said that the sentences imposed by the trial judge of six months' imprisonment on each of the first three charges and of one day's imprisonment on each of the other two charges were manifestly excessive. Accordingly, the appeal is dismissed.

Appeal dismissed.

Solicitors: *Murphy & Dunbar.*

C.S. WU v. WANG LOOK FUNG & ORS.

[C.A. (Kulasekaram, Sinnathuray & D'Cotta JJ.) February 12, 1981]

[Singapore — Civil Appeal No. 57 of 1980]

Defamation — Libel — Libellous publication on solicitor — Compensatory damages — Appeal on quantum awarded by lower court.

The appellant in this case is a practising lawyer and senior partner of a law firm. The first and second respondents were at the material time journalists employed by the third respondents, publisher of the *New Nation.*

On November 12, 1975, there appeared on the front page of the *New Nation* a report, the material parts of which read as follows:

"Big probe on lawyers

By Francis Rozario and Wang Look Fung.

The Chief Justice, Mr. Wee Chong Jin, has ordered the Law Society to conduct an inquiry into the professional conduct of lawyer Foo See Juan over the disposal of at least $2 million worth of assets of a property development company.

This follows an originating summons taken out by Mr. Tay Beng Swee, chairman and managing director of the company, Sin Chew Realty Pte. Ltd. heard in chambers before the Chief Justice on October 24.

A similar summons taken out by Mr. Tay against another lawyer, Mr. C.S. Wu of Donaldson & Burkinshaw, is scheduled to be heard in chambers at a later date.

This is the first time in legal history that a member of the public has taken out such a summons against the Law Society of Singapore.

Mr. Tay had originally made a complaint against the two lawyers to the Law Society in April last year, which later informed him that there 'was no substance in the complaint.'

In its reply to Mr. Tay's complaint, the Council of the Law Society said: 'The inquiry committee has received a number of complaints arising out of what is clearly a dispute between the directors of a company known as Sin Chew Realty Pte. Ltd.

It appears to the inquiry committee that some of these complaints have almost certainly been made not primarily with a view to the institution of disciplinary proceedings but with a view to the enforcement of the civil rights of the parties without the necessity of their resorting to court.

So far as the complaint of Mr. Tay Beng Swee against Mr. C.S. Wu and Mr. Foo See Juan are concerned, the inquiry committee can find nothing of substance which could in any way justify disciplinary proceedings although the facts do disclose a number of possible claims'."

The headlines "Big probe on lawyers" were in bold large letters approximately 3/4" to 1" in height, and immediately below the headlines was a photograph (6" x 2") of the appellant with his name under it.

At the trial, the respondents admitted the libel. The only issue was the quantum of damages. Choor Singh J. awarded the appellant $25,000 as compensatory damages. The appellant appealed against the said judgment. He claimed that the trial Judge had erred in law and fact in not awarding the appellant aggravated damages on the ground of malice.

Held, dismissing the appeal: (1) on a review of the evidence, there was no malice on the part of the respondents. At the highest there was only evidence of negligence on the part of the respondents;

(2) the trial Judge had properly directed himself, and there was no reason to interfere with the award he had made.

Cases referred to:-

(1) *Manson* v. *Associated Newspapers Ltd.* [1965] 1 W.L.R. 1038.

(2) *McCarey* v. *Associated Newspapers Ltd. & Ors. (No. 2)* [1965] 2 W.L.R. 45.

HIGH COURT.

H.E. Cashin for the plaintiff.

Harry Elias for the defendants.

Cur. Adv. Vult.

Choor Singh J.: This is a defamation action brought by Mr. C.S. Wu an advocate and solicitor, arising out of a news report published in the *New Nation* of November 12, 1975.

The facts are these. The plaintiff is and has been for many years an advocate and solicitor practising such profession in Singapore as a partner in the law firm of Donaldson & Burkinshaw. The first and second defendants were at the material time journalists and the third defendants are and were at the material time publishers of the *New Nation,* a newspaper having a large circulation in Singapore.

On November 12, 1975 the first and second defendants wrote and caused to be printed and the third defendants printed on the front page of the issue of the *New Nation* dated that day of and concerning the plaintiff in the way of the said profession the words following: —

"Big probe on lawyers

By Francis Rozario and Wang Look Fung.

The Chief Justice, Mr. Wee Chong Jin, has ordered the Law Society to conduct an inquiry into the professional conduct of lawyer Foo See Juan over the disposal of at least $2 million worth of assets of a property development company.

This follows an originating summons taken out by Mr. Tay Beng Swee, chairman and managing director of the company, Sin Chew Realty Pte. Ltd. heard in chambers before the Chief Justice on October 24.

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